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OFFICE OF PETITIONS

In re Application of	:	
Boyle, et al.	:	
Application No. 10/762,159	:	DECISION GRANTING PETITION
Filed: January 20, 2004	:	
Attorney Docket No. A-378CIP2C5	:	

This is a decision on the petition filed July 2, 2004, that is responsive to the "Notice of Incomplete Nonprovisional Application" (the "Notice") mailed May 5, 2004.

On January 20, 2004, the application was deposited.

On May 5, 2004, the Office of Initial Patent Examination mailed the Notice stating that drawings were not found with the application papers, but appeared to be required in order to obtain a filing date. The Notice also indicated that a sequence listing was required, but not found with the application papers. The Notice allowed a non-extendable period for response of two months from its mailing date. The instant petition was filed on July 2, 2004. Petitioner maintains that the application was complete on filing and entitled to a filing date because the application incorporated by reference the entire disclosure of a prior application.

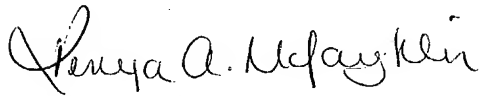
In this case, however, it has been determined that drawings are not necessary to understand at least one claim within the meaning of the first sentence of 35 USC 113. It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). A review of the record reveals that Claim 49 is a method claim. Therefore, the present application is deemed to be an application that does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, was entitled to the filing date of January 20, 2004.

The petition fee of \$130.00 will be refunded, in due course.

The absence of the sequence listing is not addressed by this decision as the sequence listing is not required in order to accord the application a filing date. It is expected, however, that the Office of Initial Patent Examination will issue a notice requiring that the sequence listing and other relevant, but omitted, material be filed.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of January 20, 2004. Prior to the first action on the merits, petitioner should file a preliminary amendment requesting entry of the omitted drawings.

Any inquiries related to this decision should be directed to the undersigned at (703) 305-0010

A handwritten signature in black ink, reading "Kenya A. McLaughlin". The signature is written in a cursive, flowing style.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions